

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CRIMINAL NO. 1:09CR13**

UNITED STATES OF AMERICA )  
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 VS. ) O R  
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 KENNETH LEE FOSTER )  
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**THIS MATTER** is before the Court on Defendant's motion to dismiss the bill of indictment filed July 6, 2009. Defendant contends he was never arraigned on the charges contained in the indictment. **Motion to Dismiss Indictment, filed July 6, 2009, at 3.**

After his arrest on February 6, 2009, the Defendant was charged along with 14 co-conspirators in a two-count indictment with conspiracy to possess with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1), and knowingly using a communication facility to further the conspiracy charged in Count One, in violation of 21 U.S.C. § 843(b).

**Bill of Indictment, filed February 17, 2009.** A review of the docket record and the FTR recording reveals the Defendant appeared with former

retained counsel, Timothy D. Smith, for arraignment on February 18, 2009. During the hearing, Defendant's counsel expressly waived a formal reading of the indictment, entered pleas of not guilty to each of the charges contained therein, and requested a jury trial. Therefore, Defendant's contention that he was not arraigned is without merit.

**IT IS, THEREFORE, ORDERED** that Defendant's motion to dismiss the bill of indictment is **DENIED**.

Signed: July 10, 2009



Lacy H. Thornburg  
United States District Judge

